

NOTICE PUBLICATION/REGULATIONS SUBMISSION

See instructions on
reverse

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER 2015-0209-02N	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

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OFFICE OF
ADMINISTRATIVE LAW**ENDORSED - FILED**in the office of the Secretary of State
of the State of California**MAR 24 2015**

2:27 PM

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY

California State Lands Commission

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE Change Without Regulatory Effect-CPI Formula		TITLE(S) 2	FIRST SECTION AFFECTED 1900(m)	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input checked="" type="checkbox"/> Other		4. AGENCY CONTACT PERSON Warren Crunk	TELEPHONE NUMBER (916) 574-1935	FAX NUMBER (Optional) (915) 574-1855
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) CPI formula for calculating adjusted rent		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) Register 2014, Number 11 per agency request	
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)			
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)		ADOPT	
		AMEND 1900(m)	
TITLE(S) 2		REPEAL	
3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §511346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input checked="" type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §511349.3, 11349.4)		<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> Other (Specify) _____	
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input checked="" type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal	
<input type="checkbox"/> Other (Specify) _____			
7. CONTACT PERSON Warren Crunk		TELEPHONE NUMBER (916) 574-1935	FAX NUMBER (Optional) E-MAIL ADDRESS (Optional) warren.crunk@slc.ca.gov

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

DATE

TYPED NAME AND TITLE OF SIGNATORY

Jennifer Lucchesi - Executive Officer, California State Lands Commission

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED**MAR 24 2015**

Office of Administrative Law

FINAL REGULATION TEXT

2 CCR § 1900

§ 1900. Definitions.

The following definitions shall apply to this Chapter unless otherwise provided.

- (a) The term "applicant" includes any person who files an application under these regulations.
- (b) The term "person" includes any individual, firm, partnership, business entity, business trust, association, corporation, or governmental entity or agency.
- (c) The term "lease" includes a permit, right-of-way, easement, license, compensatory agreement, or other entitlement of use.
- (d) The term "structure" means any manmade construction.
- (e) The term "sovereign lands" means the beds of all the State's natural, navigable waterways, and tide and submerged lands, including those adjacent to the coast and offshore islands of the State from the ordinary high water mark to three geographic miles offshore. On tidal waterways, the State's sovereign fee ownership extends landward to the ordinary high water mark, except for areas of fill or artificial accretion, in which case the boundary is fixed at the location of the last ordinary high water mark prior to artificial influences; or where the boundary has been fixed by agreement or a court order. On navigable non-tidal waterways, including lakes, the State holds fee ownership of the bed of the waterway landward to the ordinary low water mark.
- (f) The term "submerged lands" means the area lying below the elevation of ordinary low water in the beds of all tidal and nontidal navigable waters.
- (g) The term "tidelands" means the area lying between the elevations of ordinary low water and ordinary high water on lands subject to tidal action.
- (h) The term "uplands" shall mean lands bordering on navigable waterways.
- (i) The term "school lands" refers to all Sections 16 and 36 granted to the State for the benefit of common schools by Chapter 145 of the Federal Statutes of 1853.
- (j) The term "lieu or indemnity lands" refers to those lands acquired by the State in place of school lands it previously acquired or school lands to which it did not receive title because they were either mineral in character, had not been sectionalized, or were subject to prior established rights.
- (k) The terms "merchandise," "product" and "commodity" are interchangeable and shall include, goods, wares, chattels, personal property of every description, cargo, freight, mail, vessel's stores and supplies, articles, matter and material.

(l) The term "impact area" means a reasonable area beyond the footprint of the actual facilities or improvements occupying State land. The "impact area" is intended to reflect the additional and temporary use, as well as impacts to public access or use, of State land for the docking of vessels, maintenance of the facility, or other such uses.

(m) The following formula, hereafter called the "Adjustment Formula," shall be used to determine the adjusted minimum annual rent for each year subsequent to July 1, 2014:

$$\left(\frac{\text{Current CPI} - \text{Prior CPI}}{\text{Prior CPI}} + 1 \right) \times \text{Previous Year's Rent} = \text{Adjusted Annual Rent}$$

$$\underline{(((\text{Current CPI} - \text{Prior CPI}) / \text{Prior CPI}) + 1) \times \text{Previous Year's Rent} = \text{Adjusted Annual Rent}}$$

(n) The term "CPI" means the index published periodically by the California Department of Industrial Relations and titled "California Consumer Price Index (1955-2013) All Items (1982-1984 = 100)," a successor index to the aforementioned, or a reasonably equivalent index acceptable to the Lessor and Lessee.

Note: Authority cited: Sections 6002, 6105, 6108, 6301, and 6501, Public Resources Code; and 3 Cal. 3d 462, 478 (tide and submerged lands). Reference: Sections 6301 and 6501, Public Resources Code.

THE CALIFORNIA STATE LANDS COMMISSION

Explanatory Statement

The California State Lands Commission (Commission) proposes to amend Section 1900(m) of Title 2, California Code of Regulations (CCR). The proposed amendment is a change without regulatory effect as defined in 1 CCR § 100. Specifically, the proposed change is a revision of structure, syntax, cross-reference, grammar, or punctuation under 1 CCR § 100(a)(4).

On March 10, 2014, the Commission filed an amendment to 2 CCR § 1900, operative July 1, 2014. Included in this amendment was a formula to calculate an annual adjustment to rent based on the Consumer Price Index (CPI). The Commission submitted the CPI adjustment formula in the format shown below:

$$\left(\frac{\text{Current CPI} - \text{Prior CPI}}{\text{Prior CPI}} + 1 \right) \times \text{Previous Year's Rent} = \text{Adjusted Annual Rent}$$

Expressed this way, the division symbol takes the place of a parenthesis, indicating that numerator must be simplified first. When this formula was published and reported by Westlaw, or Lexis, the formula was converted to a single line of text:

$$(\text{Current CPI} - \text{Prior CPI} / \text{Prior CPI} + 1) \times \text{Previous Year's Rent} = \text{Adjusted Annual Rent.}$$

Converting the formula to single line of text created an *order of operation* error. As submitted, it was clear that one must solve for the numerator and add "1" to the resulting fraction (or decimal). The product of the parenthetical is then multiplied by the previous year's rent to derive the adjusted annual rent.

When printed in a single line, the division symbol no longer references then entire value of Current CPI minus the Prior CPI. Rather, the division symbol only references the Prior CPI. The rules for the order of operations require that the division occur before subtraction or addition within the parenthetical. When printed in a single line, the first operation is to divide the prior year's CPI by the prior year's CPI. This operation will always result in "1." Therefore, the result of the parenthetical is always going to be the Current CPI value. The misprinted formula would require multiplying each year's rent by the raw CPI value rather than the change in the CPI. The result would increase rent several hundred times over every year.

In order to correct the error caused by the printing format, the Commission is making an amendment to the syntax of the regulations, so that when it is printed in a single line there is no ambiguity about the order of operations. The proposed text simply inserts extra parentheses to the already reported single line text so that it reads:

$$(((\text{Current CPI} - \text{Prior CPI}) / \text{Prior CPI}) + 1) \times \text{Previous Year's Rent} = \text{Adjusted Annual Rent.}$$

This addition will not change the calculation from what was submitted to the Office of Administrative Law, and what was ultimately approved. It will simply prevent confusion created by various reporting agencies using single line text.